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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1621/2016, IA No.13321/2017 (of D-2 for condonation of delay of three days in filing written statement), IA No.13322/2017 (u/O VII R-10, 10A, 10B & 11 CPC), IA No.13323/2017 (u/O XIV R-142 CPC) & I A No.13325/2017 (for recall of order dated 23rd August, 2017)
AERO CLUB Plaintiff

Through: Ms. Shwetasree Majumdar, Advs.
Versus

CITI MART & ANR Defendants

Through: Mr. Anil K. Kher, Sr. Adv. with Ms. Vasundhara Nayyar & Mr. Rahul Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.12.2018

1. The plaintiff has sued the two defendants viz. Citi Mart & Lourdes Textiles Pvt. Ltd. for permanent injunction restraining infringement of the mark 'WOODLAND', copyright therein, passing off and for ancillary reliefs.
2. The suit came up first before this Court on 16th December, 2016 when, while issuing summons / notice thereof, vide *ex parte* order the defendants were restrained from manufacturing, selling, advertising products bearing the plaintiff's mark and commission was issued to the premises of the defendants from which the infringing goods were being marketed.
3. Vide order dated 23rd August, 2017, the *ex parte* order was made absolute till the decision of the suit.

4. The pleadings have been completed and the suit is ripe for framing of issues and / or for consideration of various pending applications.
5. The senior counsel for the defendants, under instructions states that the defendants had unknowingly purchased the goods bearing the infringing marks from another and sold the same from their mall and immediately upon coming to know of the rights of the plaintiff therein have not opposed the claim of the plaintiff insofar as for permanent injunction and have also instituted a suit against the supplier of the infringing goods in the Court at Kolkata.
6. The senior counsel for the defendants thus states that subject to the plaintiff not pressing for ancillary reliefs, the defendants have no objection to the suit, insofar as for the relief of permanent injunction, being allowed today itself.
7. The counsel for the plaintiff fairly states that the plaintiff, though will not press for ancillary reliefs but is pressing for costs. It is argued that the defendants are in the trade and ought to have known that the products of the plaintiff under the mark 'WOODLAND' are sold from exclusive stores of the plaintiff itself and none else could supply the same. It is further contended that the defendants in fact were either themselves manufacturing the infringing goods or having the same manufactured from another and are thus liable at least for costs incurred by the plaintiff, stated to be in the sum of Rs.15 lacs.
8. The senior counsel for the defendants, on the aspect of costs, has left it to the discretion of this Court.

9. I am of the view that subject to the defendants paying costs of Rs.10 lacs to the plaintiff within one month, the entire claim of the plaintiff for costs shall stand satisfied. However, if the costs of Rs.10 lacs are not paid within one month, the defendants shall be liable for costs of Rs.15 lacs recoverable by the plaintiff from the defendants jointly and severally.

10. A decree is accordingly passed, in favour of the plaintiff and against the defendants, of (i) permanent injunction in terms of prayer paragraph 38(i), (ii) & (iii) of the plaint dated 9th December, 2016; (ii) delivery of goods seized by the commissioners appointed in this suit and of destruction of the said goods and / or of erasure therefrom of the impugned mark of the plaintiff, in terms of prayer paragraph 38(iv) of the plaint dated 9th December, 2016; and, (iii) recovery of costs of Rs.15 lacs; however, if costs of Rs.10 lacs are paid on or before 8th January, 2019, the entire decree for costs shall stand satisfied; else the costs of Rs.15 lacs shall also incur interest at the rate of 9% per annum from today till the date of recovery.

11. It is also agreed that the defendants, from the suit filed in the Court at Kolkata, shall have the name of the plaintiff deleted from the array of defendants.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 07, 2018

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